IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2007

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THE HONOURABLE MR.JUSTICE S.MANIKUMAR

W.P.Nos.22442, 27972 and 27973 of 2007
M.P.Nos.1, 1 and 1 of 2007

P.Jagannathasamy ... Petitioner in all W.Ps.

vs.

1. The District Collector,
Coimbatore District,
Coimbatore.

2. The Assistant Director of Geology and Mines,
Collector Office, Coimbatore. ... Respondents 1 and 2 in all W.Ps.

3. Jeyalakshmi ... 3rd respondent in
W.P.Nos.22442 & 27973/07

4. Elangovan ... 4th respondent in WP.22442/07 ... 3rd respondent in WP.27972/07

5. The Village Administrative Officer,
Myvadi Village, Udumalpet Taluk,
Coimbatore District. ... 4th respondent in
W.P.Nos.27972 & 27973/07

Prayer in W.P.No.22442 of 2007: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents 1 and 2 to prevent quarrying of any mineral in Survey Numbers 513 and 519 of Myvadi Village, Udumalpet Taluk, Coimbatore District by the respondents 3 and 4 or their men or agents or anyone claiming through them or by any other person and consequently to take immediate action to cancel any quarry lease or licence if already granted to the respondents 3 and 4 or any other person in respect of the lands in Survey Numbers 513 and 519 of Myvadi Village, Udumalpet Taluk, Coimbatore District.

Prayer in W.P.No.27972 of 2007: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in Na.Ka.No.1266/2005/MM2, dated 28.03.2007, quash the same and direct the respondents to stop all quarry activity in Survey Number 519/1, Myvadi Village, Udumalpet Taluk, Coimbatore District.

Prayer in W.P.No.27973 of 2007: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in Na.Ka.No.2133/2003/MM2, dated 28.03.2007, quash the same and direct the respondents to stop all quarry activity in Survey Number 513/2A, Myvadi Village, Udumalpet Taluk, Coimbatore District.

For Petitioners : Mr.P.Srinivas

For Respondents : Mr.A.Arumugam,
Addl. Govt. Pleader

For Respondents 3 & 4 : Mr.Muthappan

COMMON ORDER

In W.P.Nos.27972 and 27973 of 2007, the petitioner has sought a Writ of Certiorarified Mandamus to quash the lease granted to the quarry operators, viz., Mr.Elangovan, in respect of Survey No.519/1, Myvadi Village, Udumalpet Taluk, Coimbatore District and Mrs.Jeyalakshmi in respect of Survey No.513/2A, Myvadi Village, Udumalpet Taluk, Coimbatore District, as violative of Rule 36 of the Tamil Nadu Minor and Mineral Concession Rules and in W.P.No.22442 of 2007, the petitioner has sought a Mandamus directing the respondents 1 and 2 therein to prevent quarrying of any mineral in the above Survey numbers by the lessees.

2. For the purpose of convenience, contesting parties are described as petitioner and respondents 3 and 4, lessees. As all the three Writ petitions involve the common question of facts and law, they are disposed of by a common order.

3. Brief facts leading to the Writ Petitions are as follows:
The petitioner is the owner of the land in Survey No.531/2, Myvadi Village, Udumalpet Taluk, Coimbatore District, to an extent of 3.84.5 Hectares. He has constructed a house in the said land, which is periodically assessed to Property Tax. Apart from occasional dry crops being raised, the land is also used for running a poultry farm to an extent of 25,000 Sq.ft. According to the petitioner, the poultry farm is a specialised farm, for breeding of birds and there are 10,000 breeding birds, each valued at Rs.1,000/-. These birds are not regular meat providers sold in the shops and therefore, they have to be kept in controlled environment, without any disturbance in the form of noise, vibration and pollution. The petitioner has valued the birds for more than Rs.1 crore and for the purpose of breeding, the birds need free and safe environment.

4. The petitioner has further submitted that he has been running the poultry farm for the past 10 years and even in the year 2001, he had put up some additional constructions with an approval of Myvadi Village Panchayat. The petitioner has further submitted that in order to provide proper facilities for breeding of chicks, he had obtained a loan of Rs.8,50,00/- from the Canara Bank and he is repaying the loan periodically from the income derived from the Farm. During the Month of December 2006, after obtaining permission from the Village Panchayat, he has constructed additional sheds for the Birds.

5. The petitioner has further submitted that during the last week of May 2007, respondents 3 and 4 have started quarrying operations by using explosives to burst the stones in Survey Nos.513/2A and 519/1, Myvadi Village, Udumalpet Taluk and it had caused huge noise, vibration, dust and smoke. The birds, which are kept for breeding, were greatly stressed and they suffered extensive injuries due to stampede. The petitioner and his relatives are also afraid of staying in their houses. The petitioner has further submitted that the distance between his land and the quarry site is less than 60 metres and since the quarry operations were carried out within the prohibited distance of 300 metres, as per Rule 36 of the Tamil Nadu Minor and Mineral Concession Rules, he made a representation dated 26.05.2007 to the District Collector, Coimbatore and the Assistant Director of Geology and Mines, Collector Office, Coimbatore, respondents 1 and 2 respectively, to take action against respondents 3 and 4. Aggrieved by the inaction, the petitioner was constrained to file W.P.No.22442 of 2007 for the relief as stated above. In the said Writ Petition, Mrs.Jeyalakshmi, the third respondent, has filed counter affidavit, stating that stone quarry lease was issued by the first

respondent on 28.03.2007 for a period of 5 years. After getting the xerox copy of the quarry lease dated 28.03.2007, the petitioner has challenged the same by way of Writ Petition in W.P.No.27973 of 2007. Assailing the above lease agreement, the petitioner has submitted that respondents 1 and 2 have not issued any public notice and that they have not followed the proper procedure under the rules, before granting lease, thereby, depriving petitioner's legitimate rights and it affects the petitioner's right to live under Article 21 of the Constitution of India. He has further submitted that if adequate public notice was given, he would have given his objections. On the same lines the petitioner has challenged the lease granted to Mr.Elangovan, the third respondent in W.P.No.27972 of 2007.

6. Mrs.Jeyalakshmi, the third respondent, in her counter affidavit has submitted that she had applied for stone quarrying operations in patta lands comprised in S.No.513/2A (Part) over an extent of 0.34.0 Hec in Myvadi Village, Udumalai Taluk, Coimbatore District on 06.10.2003 and the District Collector, after obtaining necessary reports from the Revenue Inspector (Mines) as well as the Deputy Director of Geology and Mining and after publishing notice inviting objections from the public, has granted quarrying permission in his proceedings in Na.Ka.No.2133/2003/MM2, dated 28.03.2007 for a period of five years. Pursuant to the grant of permission, a lease deed was executed on 28.03.2007. The third respondent has further submitted that the land in Survey No.531/2 owned by the petitioner is classified as an Agricultural wet lands as per the patta issued to the petitioner. The subject quarry site in S.No.519 is not a new stone quarry and it was in existence from 1995. She has further submitted that there is no "inhabited site" within the prohibited distance of 300 metres from the quarrying site and the surrounding lands are only agricultural lands and under such circumstances, the objections are not tenable.

7. The third respondent has further submitted that as per Rule 36(1-A)(c) of the Tamil Nadu Minor Mineral Concession Rules, no new lay out or building plans shall be permitted to be established within 300 metres from any quarry, unless prior approval is given by the Director of Geology and Mining. If at all any permission or approval is granted by any authority, the same is contrary to the mining rules. The third respondent has further submitted that even assuming that any permission was granted to the petitioner, the same was only for industrial purpose and not for constructing a house. For establishing an Industry for construction of house on an agricultural land, certain procedures have to be followed and to her knowledge, no such permission has been granted to the petitioner by the competent authority in this regard. The third respondent has also submitted that the subject quarry in S.No.519/1 was in operation since 1995 and there was also a stone quarry in S.No.520 in the Government Promboke land for the period from 1999 to 2004, situated between her land and petitioner's land. Quarrying operations were carried on in yet another site is S.No.518, which is closer to petitioner's property. The third respondent has further submitted that since the petitioner could not secure stone quarry lease in respect of lands in Survey No.531/2, with an ulterior motive to prevent her from quarrying, has filed the present Writ Petition and for the reasons, prayed for dismissal.

8. The counter affidavit of Mr.S.Elangovan, fourth respondent herein is on the same lines as that of Jeyalakshmi and therefore, it is not necessary to reproduce the contentions. Apart from common objections, referring to the definition, "Inhabited site" as provided under Rule 36(1-A)(c)(iii) of the Tamil Nadu Minor and Mineral Concession Rules, he has submitted that the lands owned by the petitioner are agricultural wet lands as per the revenue records and the same are not approved as "house site" by any one of the competent authorities, viz., the local body or Town or Country Planning Authority. He has further submitted that there was quarrying in Government Promoboke land in Survey No.520, till 2004 and the said lands are situated closer to the petitioner's land. The petitioner did not make any serious objection over the location of the quarry but has chosen to object to the lease granted to the respondents 3 and 4 and it is nothing but a mala fide. The fourth

respondent has submitted that when W.P.No.22442 of 2007 was taken up for hearing, it was brought to the notice of this Court that the petitioner himself had made an application for grant of mining lease in Survey No.513/1 and in order to overcome the objections raised in the Writ Petition, the petitioner has withdrawn his application on 19.07.2007. The fourth respondent has further submitted that mere assessment of house tax for an alleged construction put up by the petitioner on an agricultural land, will not fall within the ambit of "inhabited site", as defined in the Tamil Nadu Minor Mineral Concession Rules.

9. The District Collector, Coimbatore in his counter affidavit has submitted that Smt.Jeyalakshmi, wife of R.Krishnaswamy, was granted quarry lease to quarry rough stone/soil in S.No.513/2A (part) over an extent of 2.88.5 hectares in Myvadi Village, Udumalpet Taluk for a period of 5 years from 28.03.2007 to 27.03.2012, vide proceedings No.2133 of 2005 MM2 dated 28.03.2007. Likewise, Thiru.N.Elangovan, S/0.Nithiyanantham was also granted quarry lease for quarrying rough stone in Survey No.519/1, over an extent of 1.77.5 hectares in Myvadi Vilage, Udumalpet Taluk for a period of 5 years from 28.03.207 to 27.03.2012, vide proceedings No.1266/2005/MM2, dated 28.03.2007. The first respondent has denied the contention of the petitioner that respondents 3 and 4 have started quarrying suddenly.

10. He has further submitted that on receipt of separate applications for grant of quarry lease from respondents 3 and 4, objections were called for from the public by way of public notice duly published by the Village Administrative Officer, Myvadi Village and since no objections were received from any quarters within the stipulated time, respondents 3 and 4 were given separate lease to quarry rough stone in the above said Survey Numbers. The District Collector has further submitted that the petitioner himself had applied for grant of lease to quarry rough stone in Survey No.531/2 (part) over an extent of 0.97.0 hectare in Myvadi Village of Udumalpet Taluk, vide his application dated 12.12.2005 and the same was pending clearance from the Tamil Nadu Electricity Board. At this juncture, it is pertinent to note that the said application was withdrawn by the petitioner later on. The District Collector has further submitted that there is "no inhabited site" within the distance 300 metres and even though petitioner's land in Survey Number 531/2 is situated within the prohibited distance of 300 metres, it does not fall within the definition of "inhabited site". It is the case of the first respondent that the poultry farm said to have been constructed by the petitioner on the strength of approval of Myvadi Village, is not a "house site" under the Tamil Nadu Minor and Mineral Concession Rules.

11. Mr.P.Srinivas, learned counsel for the petitioner submitted that the disputed quarry site is within the prohibited distance of 300 meters, as per Rule 36 of the Minor Mineral Concession Rules. Referring to the receipts issued by the Village Administrative Officer, Myvadi Village for levying House tax for periods 2000-01 and 2001-02 and also the certificate of the Village Administrative Officer, Myvadi Village that there are houses in Survey Nos.513 and 519 of Myvadi Village, Udumalpet Taluk Coimbatore District, learned counsel for the petitioner submitted that the quarry site is in an objectionable place. Inviting the attention of this Court to the Survey Sketch issued by the Revenue Authorities in respect of Survey No.520 of the said village, he submitted that the distance between the quarry site and petitioner's property is within the prohibited distance of 300 metres.

12. Learned counsel for the petitioner further submitted that though the petitioner has made an application for grant of quarry lease in respect of Survey Nos.531/2, but considering the damage that is likely to be caused to the poultry in the event of quarrying operations, he has withdrawn his application on 19.07.1997. He further submitted that even otherwise, the proposal submitted by the petitioner to quarry is located on the eastern end of Survey No.513/2 whereas the poultry farm is located on the western side, the distance between the poultry farm and place proposed by the

petitioner is 400 metres away from the poultry farm and therefore, even if the petitioner had pursued the request for stone quarry, that would not affected the poultry. He further submitted that in the absence of any public notice, calling upon the aggrieved person to object to the grant of quarry lease, the grant of stone quarry by the competent authority is arbitrary.

13. Learned counsel for the petitioner further submitted that in the poultry farm, chicken breeding is the primary activity and due to blasting of rocks by using explosives, the birds that are kept for breeding were greatly stressed and the environment is not safe, resulting in loss to the petitioner. In the above circumstances, he submitted that the activities of mining operation at Survey Nos.513 and 519 of Myvadi Village, Udumalpet Taluk, Coimbatore District, have to be stopped by quashing the orders of lease and that a Mandamus to be issued to the official respondents to prevent quarrying.

14. Mr.M.Muthappan, learned counsel for the lessees submitted that the District Collector, Coimbatore, after obtaining necessary report from the Revenue Inspector (Mines) as well as the Deputy Director of Geology and Mining granted stone quarry to the fourth respondent for a period of five years and that the respondents 3 and 4 have commenced their operations from March 2007 onwards. He further submitted that the lands in S.No.520, was already subjected to quarry operation between 1995 and 2000 and the petitioner did not make any objections to the public notice effected by the District Collector before the grant of quarry. He further submitted that the petitioner himself had applied for quarrying lease in respect of very same land in S.No.531/2 and withdrew his application only on 19.03.2007, when it was brought to the notice of this Court. Under such circumstances, with an ulterior motive to prevent the quarry operators from quarrying in the above said Survey Numbers, the petitioner has filed this present Writ Petitions. Learned counsel for the fourth respondent further submitted that the quarrying operations in the subject matter of lands continued from 1995 onwards and the unsuccessful petitioner with a mala fide intention has moved the authorities as well as this Court to prevent the quarry operators from engaging themselves in their lawful business.

15. Learned counsel for the quarry operators further submitted that the land in S.No.531/2 is classified only as an agricultural wet lands, in which, the petitioner has put up his residential house. According to the counsel, no authority would grant permission to construct a house on any agricultural land and even assuming that the petitioner had put up certain constructions, that by itself would not convert the area as an "inhabited site" within the meaning of Tamil Nadu Minor Mineral Concession Rules, 1959. In this context, learned counsel for the fourth respondent stressed that the meaning of words "inhabited site" as provided in the statute should not be extended to few houses constructed without proper planning permission from the local body or any other competent authority.

16. Referring to Rule 36(1-A)(c)(iii) of the Rules, learned counsel for the fourth respondent further submitted that as quarry operation was carried in Survey Nos.513 and 519 of Myvadi Village, Udumalpet Taluk, Coimbatore District, since 1995, the petitioner ought to have obtained a clearance certificate from the competent authority, and in the absence of any planning permission/clearance from the Director of Geology and Mining as contemplated under the Rules, setting up of a poultry farm, is contrary to the Rules and therefore, the petitioner cannot take advantage of his own error and object to the quarry operations of the fourth respondent.

17. As regards house tax receipts issued to the petitioner by Myvadi Village Panchayat, learned counsel for the lessees submitted that mere levy of house tax by the local authority, even for an unauthorised construction, would not legalise an illegality, in the absence of clear classification in the revenue records as a house site. Referring to the Survey sketch appended in the typed set of papers, learned counsel for the fourth respondent submitted that the quarrying operations existed in

Survey No.520 in the Government Poromboke land, which is closer to petitioner's land in Survey Nos.531/2 of Myvadi Village, Udumalpet Taluk, Coimbatore District and the petitioner had never objected to such operation. He further submitted that the petitioner, having failed in his attempt to secure a lease for quarrying in respect of lands in the above said Survey Number, has filed the present Writ Petitions with an ulterior motive. Therefore, he submitted that when the petitioner has suppressed the existence of the quarry and not placed the entire facts before this court and hence not entitled to the equitable remedy.

18. Mr.A.Arumugam, learned Additional Government Pleader for the State submitted that on receipt of the application for grant of quarrying lease from the respondents 3 and 4, objections were called for, from the public by way of public notice in the village by the Village Administrative Officer and since no objections were received within the stipulated time, quarry lease was given to respondents 3 and 4 in the above mentioned Survey Numbers. He further submitted that when the petitioner had failed to make objections before the competent authority at the time of calling for objections, he has no locus standi to challenge the lease granted by the first respondent.

19. Learned Additional Government Pleader further submitted that the construction of the poultry farm on an agricultural land would not fall within the preview of the definition of "inhabited site" as defined under the Rules. He also submitted that the petitioner himself has applied for grant of quarry lease for quarrying rough stones in Survey No.531, vide his application dated 12.12.2005 and therefore, he submitted that as the intention of the petitioner is not genuine, but only to prevent the quarrying operations by the respondents 3 and 4 and he prayed for dismissal of the Writ Petition.

20. During the course of hearing of these Writ Petitions, this Court directed the learned Additional Government Pleader to verify and submit that there was any quarrying operation in Survey No.520 in the same village, said to be located close to the petitioner's property in Survey No.531/2 and whether any objections were received from the petitioner in respect of quarry in the above said Survey Number. The said direction was given in the light of the submissions made by the learned counsel appearing for the lessees that though Survey No.520 of Myvadi Village was located close to petitioner's property, he has not objected to the said quarry and only with a mala fide intention, the petitioner has raised objections only against respondents 3 and 4.

21. Pursuant to the above directions, learned Additional Government Pleader, produced a letter dated 27.10.2007, addressed to Special Government Pleader, High Court, Madras, in which, it is stated that Survey No.520 of Myvadi Village, is a Government land, measuring an extent of 4.32.0 hectares. Since high tension power lines are passing over the above Survey field, an extent of 0.80.0 Hectares alone were brought for tender cum auction and the same has been leased out to Thiru.P.Ponnusamy for quarrying rough stone, vide proceedings in Rc.No.459 of 1999, dated 01.04.1999 for a period of 5 years and the lease period was expired on 31.03.2004. After the expiry of lease, the above area has not been leased out for quarrying purposes. The copy of the Collector's proceedings dated 01.04.1999 granting permission to quarry and the copy of F.M.B. Sketch of S.F.No.520 are also enclosed along with letter.

Heard the counsel appearing for the parties and perused the materials available on record.

22. Let me first consider the main objection of the petitioner that the quarry site in Survey Nos.513 and 519 of Myvadi Village are located within 300 metres from an"inhabited site" as defined under the Tamil Minor Mineral Concession Rules, 1959.

23. The general restrictions in respect of quarrying operations by the permit holder or the lessee as

stated in Rule 36 of the Tamil Nadu Minor Mineral Concession Rules, 1989, is as follows:
"36. General restrictions in respect of quarrying operations:-
(1) The quarrying permit holder or the lessee or their men shall not work or carry on or allow to be worked or carried on any mining operations at or to any point within a distance of 50 metres from any railway line except with the previous written permission of the Railway administration concerned or under or beneath any ropeway or any ropeway trestle or station except under and in accordance with the written permission of the authority owning the ropeway or from any reservoir, canal or other public works such as public roads and buildings except with the previous written permission of the Collector of the District or any other officer authorised by the State Government in this behalf and otherwise than in accordance with such instructions, restrictions and conditions, either general or special, which may be attached to such permission. The said distance of 50 metres shall be measured in the case of railway, reservoir or canal horizontally from the outer toe of the bank or the outer edge of the cutting, as the case may be, and in case of building horizontally from the plinth thereof. In the case of village roads, no working shall be carried out within a distance of 10 metres and except with the previous permission of the Collector of the district or any other officer duly authorised by the State Government in this behalf and otherwise than in accordance with such directions, restrictions and additions, either general or special, which may be attached to such permission:
Provided that notwithstanding anything contained in any law for the time being in force or any provision in any lease deed or agreement already executed under these rules, there shall be no quarrying of sand in any river bed or adjoining area or any other area which is located within 500 metres radial distances from the location of any bridge, water supply system, infiltration well or pumping installation of any of the local bodies or Central or State Government Department or the Tamil Nadu Water Supply and Drainage Board head works or any area identified for locating water supply schemes by any of the above mentioned Government Departments or other bodies.
(1-A)(a) No lease shall be granted for quarrying stone within 300 metres (three hundred metres) from any inhabited site:
Provided that the existing quarries which are subsisting under current leases shall be entitled for continuance till the expiry of the lease period. The lessees whose quarries lie within a radius of 300 metres from the inhabited site shall undertake blasting operations only after getting permission of the Director of Mines Safety, Corgaum:'
Provided further that the new and existing units of quarries shall also be required to comply with the pollution control measures [(i.e.,) dust control measures] besides complying with the other conditions in regard to Pollution Control Measures.
(b) The Methodology specified in column (2) of the Table shall be adopted in respect of the operational sources specified in column (1) thereof for rock quarrying operations.
TABLE
Sl.No
Operational sources
Methodology to be adopted for controlling the dust
(1)
(2)
(3)
1
Drilling
Liquid injection (water with a wetting agent) of capturing and venting emissions to a control device.
2
Blasting
Adoption of good blasting practices
3
Loading (at mines)

Water wetting
4
Transport
Watering treatment with surface agents, soil stabilization on paving.
(c) No new layout, building plans falling within 300 metres from any quarry should be given approval by any agency unless prior clearance of the Director of Geology and Mining is obtained. On receipt of proposals for according clearance, the Director of Geology and Mining shall decide upon the continuance or closure, as the case may be, of any quarry which is situated within 300 metres from the new layout, buildings sought for such clearance."

24. For the purpose of Rule 1(1-A) "Inhabited site" is explained in Clause (iii) of Rule 36 sub-Rule (c), "Inhabited site" shall mean village site, town site or House site as referred to the revenue records or a house site or layout approved by a Local Body or Town or Country or Metropolitan Planning Authority, where the said Body or Authority is created under a statute and empowered to approve such an area as a house site or lay-out area.

25. House site, Village site or Town site is not defined in the Tamil Nadu Minor Mineral Concession Rules. It is evident in the certificate issued by the Village Administrative Officer, Myvadi Village, Udumelpet, the lands in Survey No.531 owned by the petitioner have been described as agricultural lands. Even in the patta pass book issued by the Revenue Department under Rule (5) of the Tamil Nadu Patta Pass-Book Act, 1983, the lands in Survey No.531 have been described as agricultural wet lands. Since patta has been issued under the Tamil Nadu Patta Pass Book Act, 1986, it would be useful to refer certain provisions under the above said Act. Section 4 of the Act deals with the presumption of the correctness of the entries in the patta pass book and it reads as follows:-
"The entries in the patta pass-book and the certified copy of entries in the patta pass-book shall be presumed to be true and correct, until the contrary is proved or a new entry is lawfully substituted therefor."

26. Section 5 of the said Act deals with the making of entries of registration of alienation or transfer in the patta pass-book. Section 23 of the said Act deals with the issue of patta bass book for house site and it is extracted hereunder:
"(1) The Tahsildar shall issue a patta pass-book to every owner in respect of the house site owned by him.
(2) Save as otherwise provided in this Act, the provisions of this Act and the rules made thereunder shall, so far as may be, apply in relation to the issue of patta pass-book for house site under this Section, as they apply in relation to the issue of patta pass-book for land under this Act."

27. In the absence of explanation to the Words "house site" in the Tamil Nadu Minor Mineral Rules, 1989, and taking into consideration that patta pass book has been issued under the above said Act, 1983, this Court deems it proper to apply the meaning of term "house site" as explained in the Tamil Nadu Patta pass book Act, 1983, into the definition "inhabited site" under the Tamil Nadu Minor Mineral Concession Rules. "House site" as defined in the Patta Pass-Book Act is extracted hereunder,
"house site" means a plot of land held for building purpose, whether any building in actually erected thereupon or not and includes the open ground or courtyard enclosed by or adjacent to, any building erected thereupon but does not include land as defined in Clause (4) of Section 2."
Now in the above backdrop, a scrutiny of the definition of "Inhabited site" in Rule 36(1-A)(c)(iii) of the Rules, would make it clear that it has two parts. 1) The site should be a village site or town site or a house site as referred to in the revenue records; and 2) a house or layout approved approved by a Local Body or Town or Country or Metropolitan Planning Authority, where the said Body or Authority is created under a statute and empowered to approve such an area as a house site or lay-

out area.

28. As stated supra, revenue records produced by the petitioner and the certificate issued by the Village Administrative Officer, Myvadi Village, clearly prove that the petitioner's land is only an agricultural land and it is not held for building purposes as per the revenue records. Further, the revenue authorities have not described the land in the above Survey Number for dwelling purposes and issued any patta in terms of Section 23 of the Tamil Nadu Patta Pass-Book Act, 1983.

29. In common parlance, "house site" is meant to be a land for dwelling purpose. There may be a case, where an agriculturist may put up a thatched shed or dewelling place near his agricultural lands for the purpose of stay to look after the agricultural crops, trees standing on such land and that by itself would not change the classification of the land. In the instant case, probably the petitioner might have put up houses to look after the poultry farm.

30. As per Rule 36(1-A)(c) of the Rules, no new lay out, buildings plans falling within 300 metres from any quarry should be given approval by any agency, unless prior clearance of the Director of geology and Mining is obtained. On receipt of the proposals for recording clearance, the Director of Geology and Mining shall decide upon the continuance or closure, as the case may be, of any quarry which is situated within 300 metres from the new layout, buildings sought for such clearance.

31. Admittedly, the the petitioner has not produced any building plan or any order of approval of any agency with the clearance of Director and Geology and Mining and therefore, the construction of any building put up by the petitioner on his agricultural land cannot be construed as construction approved by the Mining Authorities. No other supporting documents have been produced by the petitioner to prove that any other lands located near the disputed property have been described as "house site" by the revenue authorities.

32. As regards the contention of the petitioner that the respondents 1 and 2 have not issued any public notice and not followed the proper procedure, before granting lease to quarry operators, it is evident from the impugned orders that the Deputy Director of Geology and Mines along with the Revenue Inspector (Mines) had conducted an inspection on 06.03.2007 and they haved noticed that there is no house site or village site or dwelling place within 300 metres from the quarry site and on consideration of the Report from the said Officer along with the Certificate of the Village administrative Officer, leases have been granted to the respondents 3 and 4, quarry operators. Had there not been any public notice for quarry, there would not have any occasion for submission of the application by the petitioner to quarry in the same site. Perusal of the impugned order makes it clear that no objection was raised from any quarters for the disputed quarry site. Therefore, the contention of the petitioner as regards violation of procedure before grant of quarry lease is not tenable.

33. In one of the Writ Petitions, in W.P.No.22442 of 2007, the petitioner has sought a Writ of mandamus directing the respondents to prevent quarry by the respondents 3 and 4 in Survey Nos.513 and 591, Myvadi Village, Udumelpet, and consequently take immediate action for cancellation of quarry lease in respect of the above said Survey Numbers. This Writ Petition has been filed on 20th June 2007. Though the petitioner had submitted that he is running the poultry farm for the past 10 years, no materials were produced before this Court to prove that the competent authority has granted permission to put up the poultry farm. It is further evident from the letter dated 27.10.2007 of the District Collector, Coimbatore, the first respondent, that there was a quarry of rough stone in Survey No.520 of Myvadi Village from 01.04.1999 to 31.03.2004 and that there was no objection from the petitioner. The fact that the petitioner himself had submitted an

application earlier to quarry in Survey No.513 and subsequently withdrawn on 19.07.2007 in view of the stand taken by the respondents, clearly demonstrates that the petitioner's demand to quash the leases granted to the petitioner is not bona fide.

34. Under the guise of protecting his poultry farm and taking advantage of the tax receipts issued to the houses, the petitioner has filed these Writ Petitions to curtail the mining operations. A person who claims equity approach the Court with clean hands and there should be bona fide in his case. From the above facts, it could be reasonably inferred that the unsuccessful claimant has approached this Court with a mala fide intention to curtail the fundamental rights of the lessees in their lawful activity.

S. MANIKUMAR, J.

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35. In the light of the above discussion, I do not find that the petitioner has made out any strong case for invoking the Writ jurisdiction. Therefore, the Writ Petitions fails and the same are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

.12.2007
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To
1. The District Collector,
Coimbatore District,
Coimbatore.

2. The Assistant Director of Geology and Mines,
Collector Office, Coimbatore.

3. The Village Administrative Officer,
Myvadi Village, Udumalpet Taluk,
Coimbatore District.